

# SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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October 5, 2016

Michael L. Connor  
Deputy Secretary  
Department of the Interior  
1849 C Street, NW  
MS 3642  
Washington, DC 20240

## **RE: Comments on the Implementation of the Indian Trust Asset Reform Act**

Dear Deputy Secretary Connor,

I write on behalf of the Department of the Interior's Self-Governance Advisory Committee (DOI-SGAC) to provide comments on the implementation of Public Law 114-178, the Indian Trust Asset Reform Act (ITARA) which recently became law on June 22, 2016. SGAC, comprised of Tribal leadership from each Bureau of Indian Affairs (BIA) Region with Self-Governance Tribes, regularly provides the Assistant Secretary of Indian Affairs (ASIA) and the Director of the Office of Self-Governance (OSG) input regarding all Self-Governance programs, Federal laws, regulations, policies and budget issues within Indian Affairs.

Over the last two decades, more than 260 Tribal governments from all over the Nation have chosen to participate in the Self-Governance Program and to provide Federal services directly to Tribal citizens. Adoption of Self-Governance has provided an opportunity for Tribes to tailor programs so that they best meet the needs of citizens and expand their governance to fully realize their authority. Implementation of ITARA will undoubtedly have impact on how these Tribes choose to implement Self-Governance and related Tribal programs.

Public Law 114-178 clearly affirms that ITARA does not replace the rights Tribes have to enter into Compacts. However the law should supplement and extend rights Tribes have under these Compacts and support expansion of Tribal Self-Determination. As such, SGAC provides the following comments to implement ITARA so that it maximizes Self-Governance.

### ***Transferring Office of Special Trustee functions to other entities within DOI.***

The Office of Special Trustee (OST) currently has five offices, including appraisal services, historical trust accounting, field operations, trust services, and program management, which could transfer responsibilities to other entities within DOI. While OST performs all of these functions currently, SGAC maintains that all of these services can be compacted by a Tribe to deliver directly to their Tribal citizens. SGAC recommends that any action to implement ITARA must proceed without compromising current services carried out under the Indian Self-Determination and Education Assistance Act (ISDEAA) Contracts and Compacts. In fact, any change should support and encourage Tribal Self-Governance and Self-Determination. Self-Governance Tribes recommend the following actions in order to implement ITARA:

- **Incorporate OST Office of Appraisal Services into the DOI Office of Valuation Services.** Prior to June 2002, BIA performed Trust appraisals as a part of their responsibilities under Real Estate Services. The authority was transferred to eliminate any perceived and/or potential conflict of interest between the appraiser and BIA. Upon the transfer, OST assumed all related staff, including the Chief Appraiser, Regional Appraisers and Staff appraisers to develop the Office of Appraisal Services (OAS).

Recognizing that a conflict may remain within the BIA Division of Real Estate Services, Self-Governance Tribes recommend that the functions and OAS staff be transferred to the DOI Office of Valuation Services (OVS). Further, we recommend that OVS adopt a new branch dedicated to Indian Trust Valuations and maintain the Regional Supervisory Appraisers (RSAs) to accommodate unique needs of Tribal Nations. Additionally, we recommend that these services remain contractible and compactible for Tribes who wish to provide these services directly.

- **Transfer Services provided by the Program Management, Field Operations, Historical Trust Accounting and Trust Services to BIA Office of Trust Services.** Under ITARA and existing ISDEAA agreements many Tribes are or will be assuming responsibility for Program Management services, including trust records, trust review and audit, and risk management. As such, Self-Governance Tribes recommend that these services be transferred to BIA Office of Trust Services (OTS) and that funds currently supporting these programs, services, functions, and activities be available for Tribes to Contract and Compact under ISDEAA agreements, except for those associated with inherent Federal functions (IFF).

Field Operations services are currently provided locally in BIA regional field offices. Self-Governance Tribes believe these functions should be transferred to BIA OTS as most of these services are replicated between the BIA OTS divisions and OST staff. Streamlining these functions will ensure greater efficiency and communication between staff.

While working through the *Elouise Cobell, et al., vs. Ken Salazar, Secretary of the Interior, et al.* class action lawsuit, Tribal leaders learned that the OST Office of Historical Trust Accounting (OHTA) does not have the capability to accurately provide historical accounting of Individual Indian Money (IIM) accounts. Additionally, Tribes have successfully assumed the responsibility of managing (IIM) accounts from OST Trust Services. As such, Self-Governance Tribes believe, those duties which OHTA and Trust Services currently provide be transferred to the BIA OTS and that the funding be available for Tribes who wish to assume responsibilities of those programs, services, functions, or activities associated with OHTA.

***Minimum qualifications of individuals to prepare appraisals and valuations of Indian trust property.***

Individual qualifications to prepare appraisals and valuations may differ slightly based on the Department's decision regarding transitioning these services. However, Self-Governance Tribes offer the following recommendations regardless of where OAS is transferred.

- **Appraisals and valuations should be conducted according to industry standards and Federal law.**  
Self-Governance Tribes recommend that any appraisal or valuation of Indian trust property be provided in accordance with published authority contained in the Code of Federal Regulations, Title 25; appraisal standards contained in the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP), and Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), as applicable. We further recommend the use of appraisal industry recognized valuation methods and techniques.
- **Individual appraisers should be required to obtain licensure, apply USPAP standards and practices, and complete regular continuing education.** Indian trust property appraisers should be licensed by each state to perform appraisals in that state or obtain a temporary permit or license to practice in that state. The appraiser should be required to follow the USPAP and complete continuing education coursework annually per USPAP and state licensing agencies.
- **Permit Tribes to adopt their own standards.** Under the ISDEAA, Tribes should be permitted to develop their own standards that are consistent with USPAP and Federal law, but meet the unique needs Tribal Nations have in assuming appraisal responsibilities.

#### ***Establishment of an Under Secretary for Indian Affairs.***

Self-Governance Tribes recognize that appointing an Under Secretary for Indian Affairs at this point in the Obama Administration may be too burdensome to pursue. However, until such time that the President appoints an Under Secretary, we recommend that the DOI Deputy Secretary remain the primary contract to oversee implementation of ITARA. Additionally, SGAC recommends:

- **Appoint an Under Secretary of Indian Affairs early in the next Administration.** We request that, as the Department develops its transition documents for the next Administration, it includes appointment of the Under Secretary position as a top priority to ensure the Department adheres to the legislatively established timelines. Funding to support this appointment, however, should not negatively impact funding that normally supports Tribal programs and services.
- **Maintain the Under Secretary of Indian Affairs following any OST Transition.** SGAC further recommends that the Under Secretary remain in place following any transition to act as the Special Trustee and oversee the IFF related to Indian property management.

#### ***Timeline for an orderly transition of OST functions.***

Proper transition of OST functions will depend on the development of a new organizational structure for any agencies, divisions, or offices that will assume new responsibilities and internal requirements to make the transfers. In any case, Self-Governance Tribes request that the Department develop a timeline for transfer of services that is no longer than two years. Any timeline longer than two years should concretely describe why additional time is necessary to transfer functions that were previously carried out by BIA.

***Implementation of Title II – Indian Trust Management Demonstration Project***

Self-Governance Tribes are interested to see and hear more from DOI regarding implementation of the Indian Trust Management Demonstration Project. This Demonstration Project provides mechanisms for Tribes to exert their sovereign rights – which were preserved in treaties – to design and implement their own trust asset management under Tribal authority.

- **Implement the demonstration project.** Many Tribes have advocated for the authority to manage trust resources. Though Title II does not have a prescriptive timeline, DOI should work to develop an efficient process that implements the Demonstration Project.

Thank you for the opportunity to provide feedback and comments on implementation of ITARA. We look forward to providing additional assistance regarding the office transition as the Department develops and implements its report to Congress. If you have additional questions, please contact me at [rallen@jamestowntribe.org](mailto:rallen@jamestowntribe.org).

Sincerely,



W. Ron Allen  
Tribal Chairman/CEO, Jamestown S'Klallam Tribe  
Chairman, DOI SGAC

Cc: SGAC Members and Technical Workgroup